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ABSTRACT

The conflict between authoritarianism and democracy is almost nowhere more obvious than in the controversial area of student rights. In loco parentis, long an integral part of educational practice, is no longer an accepted role for educators to assume toward students. Directly counter to in loco parentis is the concept of due process of law for students. This review of the literature examines the key court decisions establishing such civil liberties for students as First Amendment rights, freedom from unreasonable search and seizure, the right of students to examine their records, equal treatment for handicapped students, and freedom from discrimination on the basis of race or sex. In regard to student rights, the school administrator's position is not an enviable one. The ambiguity surrounding the student rights controversy makes hard and fast answers difficult to come by. But the schools can become the setting for achieving balance between the opposing forces evident in both the student rights controversy and in the society as a whole. (Author)

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Student RIGHTS and DISCIPLINE

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Dee Schofield and Pierre Dunn

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Besides processing documents and journal articles, the Clearinghouse has another major function — information analysis and synthesis. The Clearinghouse prepares bibliographies, literature reviews, state-of-the-knowledge papers, and other interpretive research studies on topics in its educational area.

School administrators of today find themselves caught between two warring factions: the "hardnoses" who agree wholeheartedly with ex-Vice-President Agnew that "discipline and order ought to be a first priorty—even ahead of curriculum—in the schools of this country," and the "bleeding heart" liberals who believe that the best education can never be achieved in a stringent "law 'n order" environment.

Almost nowhere does this conflict become more heated than in the controversial area of rights for students. The conflict over student rights is a manifestation of a much broader (and deeper) conflict within American society as a whole. That the schools have become embroiled in this controversy is an inevitable result of the nature of public education in this country.

Hand in hand with the uniquely American idea of public education for everyone (rich or poor) go two diametrically opposed concepts. Both have their roots deep in American history and philosophy, and their impact is still felt in current attempts to define the rights of students. One holds that authority emanates from above, and those governed by such authority have little or no say about how that power is exercised. The other holds that authority originates solely within the governed themselves and that they alone are able to determine what governmental action is in their best interests. This conceptual conflict has plagued American education (just as it has American political philosophy) since before the Revolution.

Puritan Authoritarianism

The idea of public education, along with the concept of authoritarian control, originated in the Massachusetts Bay Colony settled by Puritans in the seventeenth century. The Puritan governmental structure reflected these colonists' con-

of reason was to frame a government in which no one person, or group of persons, had supreme authority. Thus, "Those who govern have defined functions beyond which they may not go," as Ladd states. These functions are defined by law; hence, democracy, as these two theorists conceived it, is government by law, not by men. And the Constitution, in conjunction with the courts, exists to resolve conflicts arising over the exercise of power.

Operating under these democratic premises, Jefferson outlined a function of education quite different from that espoused by the Puritans. Instead of a means of control, education was, to Jefferson, the means of preparing the populace for assumption of governmental responsibility. In his "Notes on Virginia" (cited in Goldstein), he proposes a system of schooling intended "to diffuse knowledge more generally through the mass of the people." He outlines a system of education designed to provide the essentials ("reading, writing, and arithmetic") for everyone. From these tuition-less schools the cream of the crop is to be selected for further schooling, thus allowing those with more natural ability access to higher education. Noticeably absent in Jefferson's plan is any reference to the discipline and rigid control so characteristic of the Puritan educational system.

The Trend toward Student Rights

Much has changed since these two opposing concepts of education were first developed. According to Naherny and Rosario, the Puritan view of children as ignorant, evil, and even depraved creatures requiring salvation as much as their elders slowly gave way to the Enlightenment notion of the child as pure and innocent until corrupted by man. The impact of science and technology in the late nineteenth century freed the child of even this theological significance. The focus of education shifted from controlling the child's evil nature or protecting his innocence to a new concern for allowing the child to develop freely, though with adult guidance.

Despite this shift away from authoritarianism, however, educational traditions remained more suited to the earlier

attitudes. Ladd notes that "school law specialists still commonly refer to the regulating of student conduct as 'pupil control'." It is not surprising that the continual widening of the gap between these educational traditions and the developing belief that children need freedom in order to develop as strong and effective citizens has created tensions that have erupted into the conflicts we are now witnessing.

Nor should it come as any surprise that in response to this unresolved conflict the courts have stepped into the gap. These courts were created to act as the guardians of the Constitution, with its Bill of Rights—the very documents Madison and Jefferson helped to create. Historically the courts have been reluctant to interfere in the day-to-day affairs of governmental institutions, of which the school system is one of the largest and most independent. To the extent the courts in recent years have intervened in matters relating to student rights and discipline, it is in large part because they have observed no other institutions—for example, legislative bodies (especially on the state level)—taking aggressive action to safeguard constitutionally protected liberties.

Because of the greater role played by the courts in the delineation of student rights, this paper focuses in large part on what Hazard terms "court-made" law. The school administrator today is in a rather awkward situation, as numerous writers on this topic have pointed out. He or she must incorporate the mandates of the courts into the governmental and disciplinary structure of the school, walking a fine line between increasingly assertive conservative and liberal factions in the community. And above all else, the administrator must always consider how best to achieve the goals of education for students —how to prepare them for citizenship.

THE BASIS FOR AUTHORITY: *IN LOCO PARENTIS*

Nowhere in the area of control of student behavior is the conflict between authoritarianism and democracy more evident than in the controversy over the concept of *in loco parentis*. Originating in the days of private tutors hired directly by the parent, the concept views the teacher as acting literally "in the place of the parent," having full responsibility for the child in the parent's absence. Strengthened by the Puritan belief that children were inherently evil and had to be forced into the paths of righteousness with a stern hand, the concept of *in loco parentis* passed intact into the public school system as part of common law.

Since the parental role incorporates both constructive and punitive aspects, it follows under the *in loco parentis* concept that school authorities are also entrusted with both responsibilities. When the administrator acts as "a defender and supporter of the student," playing "the role of the child advocate, there to help the student," as Nolte describes the protective function in his 1973 paper, few if any students or parents are likely to object.

But the punishment function is also a part of *in loco parentis*, as Reutter points out: "As applied to discipline the inference is that school personnel may establish rules for the educational welfare of the child and the operation of the school and may inflict punishments for disobedience." It is specifically against this broad authority that objections are raised by student rights advocates.

Nolte's analysis of the dual nature of *in loco parentis* raises what may be thought of as a question of conflict of interest. How is the school administrator to act as an advocate for the student while simultaneously investigating, judging, and punishing that same student in an official capacity as "in effect, an agent of the state"?

FOREWORD

Both the Association of California School Administrators and the ERIC Clearinghouse on Educational Management are pleased to cooperate in producing the *Educational Leaders Digest*, a series of reports designed to offer educational leaders essential information on a wide range of critical concerns in education.

At a time when decisions in education must be made on the basis of increasingly complex information, the *Digest* provides school administrators with concise, readable analyses of the most important trends in schools today, as well as points up the practical implications of major research findings.

By special cooperative arrangement, the series draws on the extensive research facilities and expertise of the ERIC Clearinghouse on Educational Management. The titles in the series were planned and developed cooperatively by both organizations. Utilizing the resources of the ERIC network, the Clearinghouse is responsible for researching the topics and preparing the copy for publication by ACSA.

The authors of this report, Dee Schofield and Pierre Dunn, were commissioned by the Clearinghouse as research analysts and writers.

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The fact that public school systems have been created by state law, and school administrators are therefore agents of government at some level, is one of the main reasons many school law specialists find the *in loco parentis* concept obsolete, according to Bolmeier. Indeed, it is partly because the administrator is "an agent of the state" rather than a true representative of the parents that the courts now exercise such effective jurisdiction over school affairs.

Bolmeier notes that *in loco parentis* became established under a tutorial system that provided a one-to-one relationship between student and educator. With the advent of large schools and larger student/teacher ratios, this contact became less intimate and more formalized. A true parent-to-child relationship could no longer logically be claimed.

One of the effects of this loss of intimacy and close concern was recognized by a Vermont court as early as 1859. Kleeman states that this court noted the possibility for abuse of the punitive side of the *in loco parentis* role. The school official has none of the "instinct of parental affection" that normally acts as a curb on intrafamily discipline, according to this court.

Although some court rulings have reinforced the *in loco* doctrine, even as recently as 1969 (*State v. Stein*, 456 P.2d 1), others have seriously questioned its validity, especially where it interferes with due process, as Nolte points out. That no definitive ruling (specifically from the Supreme Court) has been, or even can be, rendered on this doctrine indicates that the tension between authoritarian control and democratic latitude has yet to be resolved. But if one thing is clear in all the ambiguity surrounding the *in loco* issue, it is that educators can no longer fall back on their quasi-parental role in situations involving student discipline.

Directly counter to the concept of *in loco parentis* is the concept of due process of law for students. While the former assumes that the student must submit unquestioningly and without appeal to the discipline of his or her superiors, the latter assumes that those superiors may not deprive a student of "life, liberty, or property" without according him the chance to answer the charges against him and to plead his case before any disciplinary action can be taken.

Due process rights can be divided into two distinct types. Substantive due process guarantees the equal application of the laws and protection from the unreasonable deprivation of life, liberty, and property. Procedural due process provides for the following of certain required steps before such deprivation can be considered acceptable. The history of court recognition of student rights is one of the establishment of substantive rights first and then a shift in concern to the delineation of procedural rights.

Substantive Rights

The big breakthrough for student rights came in 1954, when the Supreme Court decided *Brown v. Board of Education*. In addition to calling a halt to racial segregation, *Brown* also firmly established federal court jurisdiction in student rights cases and provided the basis for the application of the Fourteenth Amendment guarantee of "equal protection of the laws" to students in school as well as to the population in general.

The *Brown* decision furnished tremendous inspiration for the civil rights movement, creating an atmosphere ideal for student rights activism. Still, the reluctance of the Supreme Court to interfere in school affairs, partly out of respect for the tradition of *in loco parentis*, postponed until 1969 any further

decision of landmark proportions in the area of substantive rights. That decision came in *Tinker v. Des Moines Independent School District*.

In *Tinker* the Supreme Court directly addressed the area of student discipline per se for the first time, as Reutter notes. The "black armband" case has received more attention by educators and student rights advocates than has almost any other court decision in recent history. Although Mr. Justice Fortas, in writing the majority opinion of the Court, emphasized that "for almost 50 years" the Supreme Court has upheld the First Amendment rights of students, the *Tinker* case presents the issues of the constitutional rights of students in terms much clearer than previous rulings. In upholding the students' claim that their freedom of expression had been abridged by a school rule barring the wearing of armbands in protest of the Vietnam war, the Court states the crux of its argument in memorable terms:

> First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. (393 U.S. 503, 89 S. Ct. 733, 736)

Although legitimately viewed as a milestone case by student rights advocates, the *Tinker* decision was far from definitive in all areas. The Court explicitly spelled out those areas (such as "type of clothing" and "hair style or deportment") to which the ruling did not refer. The Court also asserted "the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools."

Despite these conditions, *Tinker* made amply clear the necessity of balancing school authority with students' constitutional rights. Where *Brown* established that all students had to be treated equally, *Tinker* added that students could claim the same substantive rights as adults, though the degree of freedom they had in exercising those rights was subject to restrictions, depending on the circumstances.

One of the rights that *Tinker* did not explicitly grant students was the right to procedural due process. This right was guaranteed for minors by *In re Gault* in 1967, at least as far as the juvenile court system was concerned, but schools maintained into the 1970s their *in loco parentis* prerogative to handle educational disciplinary proceedings as they saw fit. Still, it was not long before lower courts were applying the standards outlined in *Gault* to other cases in which juveniles were deprived of some degree of liberty or property.

Then, in 1975, the Supreme Court made two decisions that not only guaranteed procedural rights to students but also made school officials liable for damages if those or other constitutional rights were maliciously or unreasonably denied. The first of these cases was *Goss v. Lopez*, in which students suspended without hearings for less than ten days won the removal of any references to their suspensions from their official records. An Ohio statute permitting such suspensions without notice or hearings was struck down as unconstitutional.

In the *Goss* decision the Court states minimum standards of due process that are expressly designed to create the least possible interference with the schools' administrative practices. Basically, the student in question must be notified of the charges against him either orally or in writing and must be given an early opportunity to present his side of the story. As long as the facts are not in dispute and the proposed suspension is under ten days, no more procedure is required. If the facts *are* in doubt or if the proposed discipline is more severe, greater formality is required to avoid the chance for a miscarriage of justice.

The *Goss* decision turned in part on the Court's finding that the students in the case had a right to an education. This right is not granted in the Constitution, but is a "property interest" created by the state laws establishing free public education and requiring attendance. The students were also found to have a "liberty interest" in a good reputation; having a suspension on his record could hurt a student's chances for jobs or education in the future and thus limit his liberty. Both of these interests

are protected by the Fourteenth Amendment, which requires that due process be followed whenever they are threatened by state action.

The second 1975 decision was in *Wood v. Strickland*. Some students accused of spiking punch at a school function were suspended. The Supreme Court unanimously agreed that a lower court should investigate whether procedural due process had been followed, unanimously held that substantive due process had not been denied, and by a narrow 5-4 margin stated as its most significant finding that school officials who should reasonably be aware of students' constitutional rights and yet fail to observe them are liable for monetary damages.

The Opened Door

The Court has clearly established its belief that students do have rights and that school officials must regard themselves as governmental representatives expected to meet their legal responsibilities professionally. But can the Court's decisions in *Tinker*, *Goss*, and *Wood* be considered definitive and final? Hardly. *Tinker* limited its own applications strictly and listed several areas to be left for future decisions. While both *Goss* and *Wood* were strongly stated, neither was specific enough to serve as more than a theoretical guideline to the administrator stuck with a complex practical situation.

In fact, these Court decisions may prove in the long run to be more important for having opened the door to the future than for having settled anything in themselves. Weckstein notes that Justice Powell's dissent to the *Goss* decision, although rather alarmist in tone, does a better job than the majority opinion of visualizing the possibilities for future litigation that Court recognition of students rights might summon forth.

For instance, if a student can successfully claim that a suspension of two or three days impinges on his property and liberty interests enough to require due process, how can other administrative decisions affecting education be justified without similar due process requirements? Surely academic evaluation, exclusion from extracurricular activities, involun-

tary transfers, placement in special schools or classes, and educational tracking limit the student as much as a brief suspension! And how can due process be denied in cases where student records are challenged, corporal punishment is administered, behavior modifying drugs are given, student publications are subject to prior review, and students are excluded from activities for medical reasons?

Goss states that disciplinary action more severe than a ten-day suspension requires a more formal due process procedure. How are the effects of the administrative actions listed above to be weighed in the balance, and what degree of formality will each require? *Wood* requires school officials to understand the rights of their students. What rights are affected by the actions listed above, and how can they be weighed against educational interests?

The courts have supplied no simple answers to these questions, but administrators do have some options for action. One of these is for officials to go out of their way to make sure students have every opportunity to be heard before decisions affecting them as individuals are made. A second option is to examine recent rulings on school cases regarding pupils and see how the courts have interpreted student rights. The next chapter provides a brief introduction to this process, outlining the major areas in which rights are claimed.

The tendency of the courts to decide cases on the basis of procedural issues when at all possible has led to the fairly secure, if somewhat ambiguous, due process decisions described in the previous chapter. On the other hand, this same tendency has left unanswered the need for definitive rulings on the extensiveness of other rights claimed by students.

The First Amendment guarantees freedom of speech and expression, freedom of the press, freedom of religion, and freedom of assembly. The Fourth Amendment provides protection from unreasonable searches and seizures. Student records are made accessible by The Family Educational Rights and Privacy Act. Title IX of the Education Amendments of 1972 forbids sex discrimination against students and employees in all federally assisted programs in all institutions that receive federal money. The question is not what these rights are, but how narrowly the courts will interpret them and how much discretion schools will be allowed to retain.

First Amendment Rights

The post-*Tinker* expression cases ("symbol cases," as Reutter calls them) have been decided generally on the criteria stated in *Tinker:* Where the expression of opinion through the wearing of insignia or emblems would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," school officials are justified in banning their wear. The problem, of course, is determining (and substantiating) what material and substantial interference consists of.

The school administrator must use his own judgment in "forecasting" disorder, as Reutter notes. And he must not define disorder as "the discomfort and unpleasantness that always accompany an unpopular viewpoint," as the Court

states in *Tinker*. Obviously, a fine line exists between "discomfort" and "disorder," and the court decisions since *Tinker* indicate the difficulty in defining this line. Reutter points out that some "symbol cases" have supported the students' position, while others uphold the school's.

A similar split exists in the courts' attitudes toward dress and appearance (including hairstyle). While some have overturned school regulations governing student appearance, others have upheld the school's efforts to prescribe standards for student appearance. In some federal court districts, courts have ruled that certain appearance regulations (such as those governing length of hair for male students) do indeed infringe on freedom of expression. In others, the quality of expression possible in styles of hair or dress has been considered insufficient to warrant constitutional protection.

Since 1968, a number of court cases dealing with students' rights to free expression through publications have arisen. That school authorities can control the "time, place, and manner" of student publications has been well-established (*Grayned v. City of Rockford*, 1972). But such control must not be "deceptively used as a guise for restricting production and distribution of literature deemed undesirable by school authorities," according to Reutter.

The Court of Appeals, Seventh Circuit, has ruled, in a decision since mooted by the Supreme Court, that student-published criticism of the school administration found offensive by school officials is not grounds for expulsion of the students responsible for the criticism. This court used the *Tinker* criterion of "disruption" in reaching its decision, ruling that the material in question had not disrupted the educational process in the school. As with criticism of the school administration, the courts have generally held that other controversial issues dealt with in student publications (including student rights) are permissible as long as the students follow the school's requirements for distribution.

"Obscenity and vulgarity" in student publications is not so clear-cut an issue, as Reutter points out. Although "school authorities can ban obscene materials from school premises,"

the suppression of material due to the "earthiness" of the language or the figurative use of expressions coarsely describing sexual acts has been frowned on by the courts.

The question of "prior restraint" of student publications is also undecided, with some districts holding that such restraint is permissible under certain restrictions, and others viewing it as an infringement on the exercise of First Amendment rights. This ambiguity is reflected in school policies governing administration review of student publications, according to Kleeman. He states that while "the majority of school administrators disclaim requiring 'prior review' of student publications," they acknowledge "that faculty advisers frequently do preview student publishing efforts."

The First Amendment right of freedom of religion (or from, as the case may be) is fairly well established for students, as Kleeman notes. The 1963 Supreme Court decision banning prescribed prayer in the public schools has withstood attempts by Congress and some state legislatures to reinstate school prayer.

The use of religious grounds as a reason for exclusion of children from some classes or medical requirements at the request of parents has had less success. In general, the courts have stated that unless the child is old enough to fully understand the meaning and significance of his own religious convictions, the interest of the state in having an informed and healthy citizenry outweighs the parents' interests in free exercise of their beliefs.

Freedom of assembly can easily be governed by the criteria set down in *Tinker*, according to Kleeman. Student meetings should not disrupt the regular school schedule and should conform to restrictions on the use of school facilities and the school name.

Search and Seizure

While students can claim freedom from "unreasonable searches and seizures," what courts consider unreasonable for adults they may find perfectly acceptable for students in school. Kleeman notes that the area covered by the Fourth

Amendment is "at least one where vestiges of the doctrine of *in loco parentis* still survive." The courts, conceding to educators far broader discretion in conducting warrantless searches than they concede to the police, may accept as adequate the consent of educators to a police search of a locker despite a student's objections. Student lockers and desks are often considered as school property provided for student use and subject to inspection by school officials much more readily than are the students' persons, purses, automobiles, or other private effects.

However, school officials should exercise caution in their searches of students' lockers and desks, Kleeman warns. He advises that the principal, not the teacher, should conduct the search, and that the student should be notified just prior to the search so that he may be present while it is conducted. The presence of a third party as witness is also advisable, according to Kleeman.

Student Records

The rights of students to examine and challenge their official records and to limit the access of others to them have not been established by the courts but by an act of Congress. Recent amendments to this Family Educational Rights and Privacy Act, known more familiarly as the Buckley Amendment, protect the confidentiality of those placing personal recommendations, medical statements, and similar documents in the record. The private records of an educator are not required to be opened, as long as they are for the educator's own use and not gathered as part of a systematic collection of data. This recently won right of students and their parents has made record-keeping more difficult, but it also promotes greater objectivity and helps protect both the student and the school from the consequences of what could turn out to be serious mistakes.

Equal Treatment for the Handicapped

Much attention has been given recently to the right of handicapped and exceptional children to an education. Two court decisions have extended the reasoning used in *Brown v.*

Board of Education to apply it to exceptional and handicapped students. In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (1971) and in *Mills v. Board of Education of the District of Columbia* (1972), "the courts confirmed that all children, regardless of handicap, are entitled to a regular public school education or to adequate alternate educational services suited to their needs," according to Olfson.

Not only is it frequently difficult for the public school system to accommodate handicapped and exceptional children because of the added financial burden, but special private schools for these children are also obviously affected by "mainstreaming." Regardless of the difficulties, the courts, according to Turnbull, have increasingly ruled that public instruction is preferable to private instruction, and that "children with special problems benefit from contact with 'normal' children." The "right" of all children to public education seems to be increasingly well established.

Equality of the Sexes

Following a rapid increase in the number of court cases on the subject, discrimination on the basis of sex has been forbidden by Title IX. In federally funded institutions, students of either sex must be permitted to enroll in all classes. Counseling and testing materials and behavior and dress codes must be the same for both sexes. Athletic opportunities must be identical, though the regulations do not require equal expenditures.

The rules also state that pregnancy is not a valid reason for excluding students from any school, class, or activity unless the student or her doctor requests the exclusion.

The courts and the legislatures have established and are continuing to establish a much more impressive set of rights for students and of restrictions and regulations for educators than has ever before been the case. At times it must seem incredible that educators are seriously expected to fulfill all the new requirements, continue to maintain discipline in spite of these requirements, and still find time to do the job of educating the students. The decision in *Wood* even makes it necessary for the educator contemplating disciplinary measures to keep abreast of recent court decisions!

On the other hand, educators may find some solace in the fact that the courts no longer look upon them as glorified baby-sitters responsible only for keeping children off the streets. Court recognition of student rights and the growing freedom, independence, and personal responsibility those rights imply indicate a developing respect for young people. New respect must be granted also to those society recognizes as professionally capable of guiding these young people's education.

But as educators have discovered, emancipated students distrust the authority that once held them down—the respect teachers deserve must be earned. Working with students in their search for independence rather than acting as their antagonists is necessary if they are to be convinced that the democracy that gave them their rights is truly effective.

The Written Code

Of course it is easy to say "work with students." How does one go about it? Probably the most important step is to establish a written code. This code should list and explain not only the limitations on student behavior but also the recognized rights of students and the required procedures that the school must follow when disciplining students for violations. Ideally,

students should be aware of the reasons why they have the rights they enjoy and should be aware of the reasons for the rules restricting their behavior as well.

If students participate in establishing the rules by offering suggestions and voting on the resulting code, the rules' effectiveness can be even greater. It is one thing for a student to defy the administration with his fellows lending moral support, and it is quite another for that student to defy the expressed desires of his own peers.

Appie and Brady recommend as an excellent example the bill of student rights currently in use in Madison, Wisconsin, and include a copy as an appendix to their chapter on student rights. While this bill of rights does not state the reasons for the rights, it clearly lists the major rights in the areas of speech, press, use of school facilities, conduct and appearance, political activity, personal counseling, and even the right to a quality education. It is also precise about the procedures all parties must follow when rights or rules are challenged.

Apple and Brady also suggest a number of school policies that can increase the effectiveness of the code. All students should receive copies of the document and be taught the rights and rules. School personnel should also be informed of their responsibilities to the students and of the possible consequences of their failure to meet those responsibilities. Teacher training institutions share some of the burden for achieving this goal. Apple and Brady believe that educators should look on the controversy generated by honest communication with students on these and other issues "as signs of a just and educative milieu." In fact, "it may well be that the educational experience of students engaging in the dispute with others over rights and obligations is . . . more important than the granting of the specific rights themselves."

Suspension, Expulsion, and Corporal Punishment

Despite all attempts to maintain order through cooperation with students, however, some serious disruptions will still occur, and disciplinary measures will have to be taken. Suspension, expulsion, and corporal punishment remain the

major techniques available to educators faced with serious behavior problems. As we have seen, though, the use of the first two of these methods must meet stricter standards of due process than existed before the *Goss* and *Wood* decisions.

On the other hand, one area of student discipline in which *in loco parentis* still reigns supreme is the area of corporal punishment. Divoky points out that although physical punishment of prisoners and mental hospital patients is outlawed, violence against students is still sanctioned. She notes that this inconsistency is partly the result of the continued public support for corporal punishment in the schools, although the public does not approve of such punishment in other state institutions. Pointing out that few states have outlawed it, Divoky states that several "have enacted laws which expressly permit its use." Thus far, the courts have failed to rule decisively on the use of physical punishment in the schools although in some cases its application by school officials was upheld.

In their 1972 ACLU report, Reitman, Follmann, and Ladd quite vividly summarize case studies of abuse of children by teachers and administrators using physical punishment as a disciplinary measure. In some cases, students ended up in hospitals for treatment of injuries incurred when school officials applied such punishment. The ACLU report emphasizes that corporal punishment is not effective as a means of altering student behavior and, indeed, can operate to aggravate certain behavior problems rather than to eliminate them. As their report concludes,

> The use of physical violence on school children is an affront to democratic values and a constitutional infringement of individual rights. It is a degrading, dehumanizing, and counterproductive approach to the maintenance of discipline in the classroom and should be outlawed from educational institutions. . . .

It seems unlikely, however, that the law will change in the immediate future to define corporal punishment of students as "cruel and unusual."

Carter argues that none of the traditional disciplinary tech-

niques has proved truly effective in all cases. He states that "educators can begin reeducating society to the fact that responsibility is developed by disciplining students through experiences which enable them to see and understand the logical consequences of their behavior." He goes on to list a number of inschool discipline programs that have proved viable: "behavior modification counselor sessions, peer counseling, alternative schools, the contract system, and planned learning experiences."

Flexibility on the part of school administrators is of prime importance to the success of a discipline program, according to Carter. Principals set the tone of their schools and are responsible for seeing that disciplinary techniques evolve with the school's and the students' changing needs. The administrator should treat each case as unique and seek to determine with the student the reasons for his behavior and possible methods for improving it. Such procedure will help to make sure the discipline is effectively addressed to causes rather than symptoms and can also encourage the student to see the educator as a positive rather than a negative force in his life.

In view of the ambiguity that still surrounds the definition of student rights, the school administrator's position is not an enviable one. While striving "to let the punishment fit the crime," he must take care not to deprive students of their rights, even though the law is far from clear in many areas as to just what those rights are. And, as suggested at the first of this paper, hard and fast definitions are not likely to be immediately (if, indeed, ever) forthcoming.

The writers in the area of student rights and student discipline concentrate, not at all surprisingly, on the fine and much too fuzzy line between student rights and school prerogatives, as the courts have drawn it. In spite of extremely careful shading, the line remains remarkably hard to hold in focus. It twists and turns, diverges from its expected path, and sometimes even appears in two places at once. It deserves close and careful scrutiny, yet this very examination discloses that even apparently solid portions of the line may be mere shadows.

Unfortunately, this close attention to detail may be preventing most writers from grasping the meaning of the conflict as a whole. The issues at stake in the controversy over student rights are issues at stake in the society-at-large. And insofar as education has been traditionally regarded as the vehicle (and even the initiator) of social change, the way in which these issues are approached by the schools can have either a positive or negative effect on the whole of American society. If no absolute resolution is available, at least the issues themselves can be articulately and intelligently defined by educators and students.

Perhaps the vitality of our particular form of government and national philosophy lies in the continued, articulated tension between authoritarianism and democracy, control and freedom, institution and individual. If such is the case, then the schools can become (and perhaps already are) an important means of achieving balance between these opposites.

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